

Emergency Communications Network, Inc.
9 Sunshine Blvd
Ormond Beach, FL 32174

RE: CG Docket No. 02-278 Preemption

The Emergency Communications Network, Inc. is filing these comments in response to a Petition for Expedited Declaratory Ruling filed by ccAdvertising d/b/a FreeEats.com Inc. Emergency Communications Network, Inc. is an emergency notification service provider that can broadcast thousands of prerecorded emergency messages to residences and businesses around the country warning recipients of emergencies in their area. We have been in business since 1998 and we have always endeavored to comply with all laws applicable to our services. At issue is North Dakota Statute 51-28-02 and the more restrictive provisions regarding the delivery of prerecorded messages. More importantly, does the FCC have exclusive rulemaking authority and jurisdiction over interstate telephone calls and does that authority preempt state law?

North Dakota currently allows the delivery of prerecorded messages to those recipients that have “knowingly requested, consented to, permitted, or authorized receipt of the message or the message is immediately preceded by a live operator who obtains the subscriber's consent before the message is delivered.” North Dakota Stat. 51-28-02. North Dakota law does not address the delivery of prerecorded messages in any other statutes. Additionally, the law does not delineate between whether or not a call originates from within the state of North Dakota or from another state nor does it have an exception for delivering an emergency message.

The Emergency Communication Network, Inc. provides a service that allows municipalities to contact their citizens and notify them of emergency situations within their community with a prerecorded message (the service is marketed under the trademarked name “CodeRED”). Our dialers are not located in the state of North Dakota but place calls to recipients within the state. North Dakota’s law purports to have jurisdiction over these calls and messages but does not allow an exception for the delivery of a prerecorded message for emergency purposes, unlike Federal law (see 47 CFR 64 §1200). Currently, when a municipality uses our service to call recipients within the state and deliver an emergency message, they will be out of compliance with state law but in compliance with Federal Law. This is clearly contrary to 47 USC § 227 (e)(1) limiting state jurisdiction to only intrastate calls, or calls placed and terminated within a state.

North Dakota law interferes with the technical compliance rules of using recorded messages (see 47 U.S.C. §152) in that it requires a live person on the line first to obtain approval. This is contrary to the entire framework of laws

regulating interstate calling. The Rules note that although states may impose more stringent restrictions on intrastate telephone calls, state rules that purport to apply to interstate telephone calls that are inconsistent with and more restrictive than the Commission rules negate the federal objective of creating uniform national rules. They impose heavy compliance costs for companies that use the telephone network to communicate to a national database. The very reason for preemption is to create one uniform set of laws to facilitate compliance by small businesses such as ourselves.

If the FCC does not rule that the TCPA preempts state law, the ramifications would be a continuing patchwork of rules and regulations for each state, forcing small businesses to either spend more and more resources on compliance with multiple conflicting state laws or face having to defend their belief in Federal preemption in court. Businesses such as ours will be required to wait until our judicial system decides in disputes over preemption before we can offer our services in North Dakota.

Sincerely,

Bob Poe
President
Emergency Communication Network